IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2644 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHUPAT BHAYA - Petitioner(s)

Versus

UNION OF INDIA & 3 - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR SAMIR J DAVE for Respondent No(s).: 1,2.
MR RAVI KARNAVAT for Respondent No(s).: 3.
MRS VASAVDATTA BHATT for Respondent No(s).: 4.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 04/08/2005

ORAL JUDGMENT

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1.0 The petitioner has challenged the order dated

13.09.1999 passed by the Conciliation Officer, whereby the Conciliation Officer has declined to refer the dispute to the Competent Court on the ground of delay.

2.0 The petitioner was engaged as a Casual Labour initially and was allowed to work up to 20.02.1984. His services came to be terminated w.e.f. 21.02.1984 without following any due procedure of law. On 23.07.1998 he made a complaint before the Assistant Commissioner of Labour who refused to entertain the dispute on the ground of delay. Hence, the present petition.

3.0 Mr. Mukesh H Rathod learned advocate for the petitioner has submitted that the Conciliation Officer has committed an error in refusing to refer the dispute on the ground of delay inasmuch as the duty of the Officer was to submit the failure report and the appropriate authority ought to have considered the same. He has submitted that by doing so the Officer has traveled beyond the scope and powers, and therefore, the impugned order is required to be quashed and set aside.

3.1 Mr. Rathod has relied upon a judgement of the Apex Court in the case of Ajaib Singh vs. Sirhind Coop

Marketing-cum-Processing Service Society Ltd., reported in AIR 1999 SC 1351 wherein the Court held that in such case the Court can mould relief by refusing back wages or directing payment of part of back wages.

3.2 He has next relied upon a decision of the Supreme Court in the case of Mahavir Singh vs. U.P. State Electricity Board and Others, reported in 1999 II CLR 7 wherein it is held that merely because dispute was belatedly raised, it does not mean that the dispute ceased to exist, and delay in raising dispute is taken care of by not awarding full backwages but only 50% backwages for entire period are allowed.

3.3 He has next relied upon a decision of this Court in the case of Karsanbhai L. Harijan Vs. Western Railway, reported in 2001(1) GLH 441 wherein this Court has followed the decision in the case of Ajaib Singh (Supra). He, therefore, submitted that the impugned order requires to be quashed and set aside.

4.0 I have gone through the relevant papers of the matter. On the facts of the case, I am of the view that the Officer has travelled beyond the powers conferred upon him. It is clear that there is no prescribed period

of limitation under the Industrial Disputes Act. As per the settled law, if, ultimately required, the Labour Court can consider denying backwages or any other benefits to the workman due to the delay.

5.0 In the premises aforesaid, the impugned order is quashed and set aside. The competent officer shall refer the dispute to the Labour Court and the Labour Court shall take appropriate decision within a period of one year from the date of receipt of writ of this order. It is also made clear that except the aforesaid issue this Court has not gone into the merits of the matter. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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